

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING)
PHARMACY, INC. PRODUCTS LIABILITY)
LITIGATION) MDL Docket No. 2419
This Document Relates to:)
All Cases)

IN RE: NEW ENGLAND COMPOUNDING)
PHARMACY CASES) Master File No. 1:13-MD-2419 (RWZ)
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**RESPONSE REGARDING PLAINTIFFS' STEERING COMMITTEE'S MOTION FOR
DISTRIBUTION OF COMMON BENEFIT FEES AND EXPENSES**

The undersigned counsel represent numerous fungal meningitis victims in Tennessee, Virginia, Indiana, Kentucky and Michigan respectively. The undersigned respectfully submit this response regarding the Plaintiffs' Steering Committee's Motion for Distribution of Common Benefit Fees and Expenses (Doc. 3105).

The undersigned do not oppose, and in fact support, the PSC's request for distribution of common benefit fees and expenses. However, the undersigned respectfully suggest that no common benefit fees and expenses should be paid until virtually all approved claimants receive their first payments from the NECC Tort Trust.

In its motion filed September 27, 2016, the PSC expressly acknowledges that lawyers should not be paid before injured tort victims. Specifically, the PSC states as follows in its motion:

While the PSC files this motion now, as a practical matter we expect that counsel will not be paid, nor have their expenses reimbursed, until initial payment process

is concluded (or nearly so). Virtually all claimants will have first received their first payments by the time the Court approves an allocation.¹

The undersigned agree completely with that important principle. Lawyers should not be paid before meningitis victims.

On November 1, 2016, the Tort Trustee filed a Status Report (Doc. 3155) regarding payments to victims from the NECC Tort Trust. That report reveals that only 14% of approved claimants had received an initial distribution from the Tort Trust as of November 1st.² Moreover, only 3% to 4% of the Tort Trust funds had been distributed.³ Unfortunately, given the slow pace of settlement payments, it seems very unlikely that “virtually all claimants will have first received their first payments”⁴ by the time the PSC’s Motion is heard during the December 8 status conference.

Any order approving disbursement of common benefit fees and expenses to lawyers should comport with the terms stated in the PSC’s motion. No disbursement should be made until “[v]irtually all claimants will have first received their first payments.”⁵

It would be unwise to pay common benefit lawyers before settlement funds are released to injured victims. Such a circumstance would offend innocent victims, undermine public confidence in the legal system, and remove the PSC’s financial incentive to solve problems and facilitate settlement payments. Removing that incentive would further retard the already lethargic pace of payments to victims.

¹ Plaintiffs’ Steering Committee’s Motion for Distribution of Common Benefit Fees and Expenses (Doc. 3105).

² According to the Status Report, a total of 1,979 claimants have been approved to receive payments from the NECC Tort Trust. Two hundred seventy-five (275) of those claimants have received payments, which is approximately 13.8%. (Doc. 3155).

³ According to the PSC, settlement funds from the National Settling Defendants total between \$130,100,000 and \$157,350,000. (See Chart of national settlement payments – page 5 of Doc. 2914-1). According to the Tort Trustee’s November 1, 2016 Status Report, \$5,439,512 has been paid to victims, which is between 3% and 4% of the total settlement funds. (See Doc. 3155).

⁴ Plaintiffs’ Steering Committee’s Motion for Distribution of Common Benefit Fees and Expenses (Doc. 3105).

⁵ *Id.*

Any order entered regarding disbursement of common benefit fees and expenses should expressly provide that disbursement shall not occur until the Tort Trustee (Lynne F. Riley) certifies that 90% of approved tort claimants have received an initial distribution from the NECC Tort Trust. Such an approach is the only way to avoid criticism by victims and the public and to incentivize the PSC to continue working to get settlement payments distributed to tort victims as quickly as possible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, George Nolan, hereby certify that on November 22, 2016, I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

/s/ George Nolan
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